

**BEFORE THE FEDERAL MARITIME COMMISSION**

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**DOCKET NO. 14-01**

**POSSIBLE REVOCATION OF OCEAN TRANSPORTATION INTERMEDIARY  
LICENSE NO. 022025 – CARGOLOGIC USA LLC**

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**ORDER TO SHOW CAUSE**

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**BUREAU OF ENFORCEMENT**

**MEMORANDUM OF LAW**

By Order dated February 18, 2014, the Federal Maritime Commission (Commission) instituted this proceeding and directed Cargologic USA LLC (Cargologic or Respondent) to show cause why the Commission should not revoke its license for failure to report the resignation of its Qualifying Individual (QI) and seek approval of a replacement, and for failure to respond to lawful inquiries of the Commission with respect to its business activities.

**I. PROCEDURAL HISTORY**

The Commission's Order to Show Cause was published in the Federal Register on February 24, 2014, 79 Fed. Reg. 10152. Respondent was directed to submit its affidavits of fact and memorandum of law on or before March 21, 2014. The Commission's Order also designated the Commission's Bureau of Enforcement (BOE) as a party thereto. BOE was directed to submit reply affidavits of fact and memoranda of law on or before April 7, 2014.

A copy of the Order to Show Cause was served on Respondent by the Commission's Office of the Secretary via UPS at its last known business address. According to the UPS

package tracking service of record in the Commission's docket file, the package was delivered on February 19, 2014. As of March 22, 2014, the Office of the Secretary has not received any affidavits of fact or memoranda of law filed on behalf of Respondent in response to the Commission's Order.

## **II. VERIFIED STATEMENT AND PROPOSED FINDINGS OF FACT**

The Order to Show Cause provides clear notice of the Commission's assertion that the Respondent violated Commissions regulations by failing to notify the Commission of the resignation of its QI, failing to seek approval of a replacement, and repeatedly failing to respond to lawful inquiries by the Commission with respect to its OTI business. The Order provides details sufficient to permit the Respondent to clearly understand the basis of the Commission's proposed action and the necessity to furnish affidavits, documents or legal argument addressing the issue of Cargologics' operation and status or otherwise contesting the conclusion that revocation of their license is warranted.

Despite actual and constructive notice to the Respondent, Cargologic has failed to submit a written response to the Commission's Order. In view of that default, the statements of fact set forth in the Commission's Order to Show Cause as the basis for the proceeding against the Respondent, and the legal conclusions the Commission proposed to draw there from are uncontested in the record of this proceeding. See, e.g. Adair v. Penn-Nordic Lines, 26 S.R.R. 11, 15 (ALJ, 1991) ("It is a familiar rule of evidence that a party having control of information bearing upon a disputed issue may be given the burden of bringing it forward and suffering an adverse inference from failure to do so."), citing Alabama Power Co. v. F.P.C., 511 F.2d 383, 391 (DC Cir. 1974).

Notwithstanding Respondent's default, BOE herewith submits the Verified Statement of the Director of the Bureau of Certification and Licensing (BCL) Sandra Kusumoto (Kusumoto VS). The facts contained in the Kusumoto VS support the entry of a Commission order revoking the license of Cargologic for failure to maintain a QI or seek approval of a replacement as required by 46 C.F.R. §515.18 and for failure to respond to a lawful request of the Commission as required by 46 C.F.R. §515.31(g). Set forth immediately below as Proposed Findings of Fact (PFF) are supporting references to those specific documents, declarations and facts, wherever appropriate, supporting the Commission's immediate entry of an order revoking the license of Cargologic.

**Proposed Findings of Fact**

1. Cargologic is a New York limited liability company, organized in July 2005, with principal offices located at 182-16 149<sup>th</sup> Road - Suite 212, Springfield Gardens, New York 11413. BCL records identify the sole principal and owner of Cargologic as Alex Epshteyn, President and Secretary. Kusumoto VS ¶3.
2. Cargologic has been licensed to operate as an OTI since September 28, 2011, pursuant to FMC license No. 022025. It maintains freight forwarder and non-vessel operating common carrier bonds with Lexon Insurance Company. Kusumoto VS ¶4.
3. Through February 19, 2014, records of the New York Department of State, Division of Corporations, reflect that Cargologic remains in "active" status as a business entity recognized by the State of New York. Kusumoto VS ¶9.
4. At the time Cargologic was approved for licensing and at all times thereafter, the sole Qualifying Individual (QI) of record for the licensee was Matvey Gurfinkel, Vice President.

BCL has not received any requests or information submitted on behalf of Cargologic advising the Commission regarding any change in the status of its designated QI or seeking approval of a new QI. Kusumoto VS ¶4, 5.

5. Upon information and belief, Mr. Gurfinkel was no longer employed nor serving as QI for Cargologic as of March 2013. Kusumoto VS ¶6.

6. On March 25, 2013, BCL mailed correspondence to Cargologic's principal office via UPS, reminding Cargologic that all OTI licensees must maintain an active QI and requesting the licensee to submit an application to replace its QI in accordance with Commission regulations. The letter requested that Cargologic submit an application to replace its QI within 30 days. The electronic package tracking system provided by UPS reflected that the package was delivered to the addressee on March 26, 2013. BCL did not receive a response to this letter. Kusumoto VS ¶6.

7. On November 21, 2013, BCL again mailed correspondence to Cargologic's principal office via UPS, informing Cargologic that all OTI licensees must maintain an active QI and requesting the licensee to submit an application to replace its QI. BCL again requested that Cargologic submit an application to replace its QI within 30 days. The electronic package tracking system provided by UPS reflected that the package was delivered to the addressee on November 25, 2013. The letter requested that Cargologic submit an application to replace its QI within 30 days. BCL did not receive a response to this letter. Kusumoto VS ¶7.

8. On December 11, 2013, BCL communicated by email to Mr. Epshteyn, the owner and sole remaining officer of Cargologic, requesting Cargologic to submit an application to replace

its QI by December 18, 2013. To date, BCL has not received any communication in response from Cargologic. Kusumoto VS ¶8.

### III. LEGAL ARGUMENT

The Commission's OTI regulations require that when a limited liability company has been licensed on the basis of the qualifications of an officer of the company and that individual no longer serves in a full time and active capacity, the licensee must report such change to the Commission within 30 days and within that time period furnish to the Commission the name and detailed intermediary experience of any other active officer who may qualify the licensee. 46 C.F.R. §515.18(a)(6) and (c). Such information must be furnished in an FMC-18 application. 46 C.F.R. §515.18(f). A licensee in compliance with this requirement may continue to operate as an OTI while the Commission investigates the qualifications of the newly designated officer.

Cargologic, a limited liability company, was licensed on the basis of the qualifications of Mr. Gurfinkel, an officer of the company. PFF¶4. Mr. Gurfinkel was no longer employed with nor serving as QI no later than March 25, 2013. PFF¶5. Cargologic was required to report this event to the Commission but failed to do so. PFF¶4. Cargologic was therefore in violation of 46 C.F.R. § 515.18(a)(6). If Cargologic desired to continue operating as an OTI, it was required to designate and furnish to the Commission a successor QI within 30 days of March 25, 2013. PFF¶6. It failed to do so and therefore was in violation of 46 C.F.R. § 515.18(c).

In addition to the above violation, the Commission regulations require licensees to respond promptly to any lawful inquiries from any authorized representative of the Commission. 46 C.F.R. §515.31(g). Cargologic failed to respond to BCL's correspondence of March 25, 2013, November 21, 2013, and December 21, 2013 in violation of 46 C.F.R. §515.31(g). PFF¶6,7,8.

Section 19 (c) of the Shipping Act, 46 U.S.C. § 40903 (a), provides that the Commission:

. . . after notice and opportunity for a hearing, shall suspend or revoke an ocean transportation intermediary's license if the Commission finds that the ocean transportation intermediary (1) is not qualified to provide intermediary services; or (2) willfully failed to comply with a provision of this part or with an order or regulation of the Commission.

The Commission's regulations at 46 C.F.R. §515.16(a) provide that an OTI license may be revoked or suspended for any of the following reasons:

- (1) Violation of any provision of the Act, or any other statute or Commission order or regulation related to carrying on the business of an ocean transportation intermediary;
- (2) Failure to respond to any lawful order or inquiry by the Commission;
- (3) Making a materially false or misleading statement to the Commission in connection with an application for a license or an amendment to an existing license;
- (4) Where the Commission determines that the licensee is not qualified to render intermediary services; or
- (5) Failure to honor the licensee's financial obligations to the Commission.

The Kusumoto VS establishes that Cargologic has violated Commission regulations by failing to notify the Commission of the resignation of its QI and to seek approval of a replacement and by repeatedly failing to respond to lawful inquiries by the Commission.

A licensee is charged with knowledge of the requirements of the Commission's regulations. In addition, it has now failed to comply with the Commission's Order in this proceeding. BOE submits that Cargologic has acted knowingly and willfully in violating the Commission's regulations and order. See e.g., Trans-Ocean Pacific Forwarding, Inc.-Possible Violations of the Shipping Act of 1984, 27 S.R.R., 409, 412 (ALJ 1995). ("Knowingly and willfully" means "purposely or obstinately and is designed to describe the attitude of carrier, who

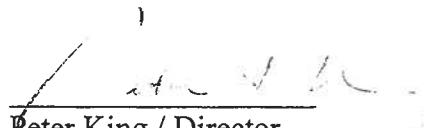
having a free will or choice, either intentionally disregards the statute or is plainly indifferent to its requirements.”). Revocation is plainly warranted.

#### IV. CONCLUSION

For the reasons set forth above, the Commission should find Respondent to be in violation of 46 C.F.R. §515.18 (a)(6) and (c) and §515.31(g). Pursuant to 46 U.S.C. 40903(a), the OTI license of Respondent should be revoked by order of the Commission and Respondent should be directed to immediately cease and desist all OTI activities.

BOE respectfully requests that the Commission enter appropriate orders in accordance with the proposed findings of fact and conclusions of law set forth above, and that this proceeding thereafter be discontinued.

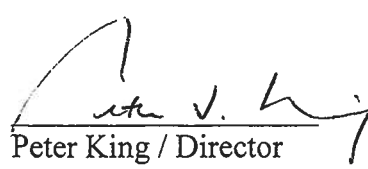
Respectfully Submitted,

  
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Peter King / Director  
Bureau of Enforcement

#### CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon all parties by first class, postage paid mail, or by courier service.

Signed in Washington D.C. this 27<sup>th</sup> day of March 2014.

  
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Peter King / Director  
Bureau of Enforcement

**FEDERAL MARITIME COMMISSION**

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**AFFIDAVIT OF SANDRA KUSUMOTO**


1. My name is Sandra Kusumoto and I am the Director of the Bureau of Certification and Licensing (BCL) of the Federal Maritime Commission (Commission). My office address is 800 North Capitol Street, Suite 970, Washington, DC 20573. I have been employed by the Commission for the past 30 years, and in my current position for 12 years. I have personal knowledge of the facts stated herein.
2. Under my direction and supervision, BCL receives, investigates, and reviews applications to be licensed as an Ocean Transportation Intermediary (OTI) under authority delegated from the Commission, 46 C.F.R. §501.26, and maintains records with regard to all applications for licenses and all OTI licenses. BCL also receives and maintains all evidence of financial responsibility for OTIs, including all Bureau databases.
3. Records maintained by BCL indicate that Cargologic USA LLC (Cargologic) is a New York limited liability company, organized in July 2005, with principal offices located at



182-16 149<sup>th</sup> Road - Suite 212, Springfield Gardens, New York 11413. BCL records identify the sole principal and owner of Cargologic as Alex Epshteyn, President and Secretary.

4. According to BCL records, Cargologic has been licensed to operate as an OTI since September 28, 2011, pursuant to FMC license No. 022025. It maintains freight forwarder (FF) and non-vessel operating common carrier (NVOCC) bonds with Lexon Insurance Company, located at 10002 Shelbyville Road - Suite 100, Louisville, Kentucky 40223. At the time Cargologic was approved for licensing and at all times thereafter, the sole Qualifying Individual (QI) of record for the licensee was Matvey Gurfinkel, Vice President.
5. The information recited above is the current information contained in BCL's records. BCL has not received any requests or information submitted on behalf of Cargologic advising the Commission regarding any change in the status of its designated QI, seeking approval of a new QI, or advising of any change in the ownership, structure, name or address of the organization.
6. Upon information and belief, Mr. Gurfinkel was no longer employed nor serving as QI for Cargologic as of March 2013. On March 25, 2013, BCL mailed correspondence to Cargologic's principal office via UPS, informing Cargologic that all OTI licensees must maintain an active QI and requested it to submit an application to replace its QI in accordance with Commission regulations at 46 C.F.R. § 515.18(c). The electronic package tracking system provided by UPS reflected that the package was delivered to the addressee on March 26, 2013. The letter requested that Cargologic submit an application to replace its QI within 30 days. BCL did not receive a response to this letter.

7. On November 21, 2013, BCL again mailed correspondence to Cargologic's principal office via UPS, informing Cargologic that all OTI licensees must maintain an active QI and requested it to submit an application to replace its QI in accordance with Commission regulations at 46 C.F.R. § 515.18(c). The electronic package tracking system provided by UPS reflected that the package was delivered to the addressee on November 25, 2013. The letter requested that Cargologic submit an application to replace its QI within 30 days. BCL did not receive a response to this letter.
8. On December 11, 2013, BCL emailed correspondence to Mr. Epshteyn, informing Cargologic that all OTI licensees must maintain an active QI and requested it to submit an application to replace its QI in accordance with Commission regulations at 46 C.F.R. § 515.18(c). The email requested that Cargologic submit an application to replace its QI by December 18, 2013. To date, BCL has not received any communication in response from Cargologic.
9. Through February 19, 2014, records of the New York Department of State, Division of Corporations, reflect that Cargologic remains in "active" status as a business entity recognized by the State of New York.
10. I declare, under penalty of perjury, that the foregoing statements are true and correct.

  
Sandra Kusumoto  
Director  
Bureau of Certification and Licensing

Executed this 27<sup>th</sup> day of March, 2014.